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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,298	07/09/2003	Alfons Sieverding	302220	1297

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EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 09/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/604,298

Applicant(s)

SIEVERDING, ALFONS

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-14 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 and 10-14 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,288,340 to Shapiro et al.

Regarding Claims 1 and 11-14, Shapiro teaches a stackable deep-drawn plastic plant pot container comprising: an at least slightly conical wall (Shapiro #28) and a bottom (Shapiro #26) connected to the conical wall (Shapiro #28), wherein the conical wall has a rim area (Shapiro Fig. 6 #42a) remote from the bottom, wherein the rim area is comprised of a first ledge (Shapiro #42a) and a second ledge (Shapiro #40a), located below the first ledge, wherein the rim area comprises an intermediate support area (Shapiro #38a) having a first end connected to the first ledge (Shapiro #42a) and having a second end connected to the second ledge (Shapiro #40a), wherein a stacking spacing of the deep-drawn plastic container, when stacked in a stack, is determined by the first and second ledges (Shapiro Fig. 8), wherein the first and second ledges in a plan view onto the rim area, at least partially overlap (Shapiro Fig. 6 and 8), wherein the intermediate support area has a first width at the first ledge that is smaller than a second width at the second ledge (Shapiro Fig. 6) and the intermediate support area (Shapiro #38a) having a wave shape at least at one of the first and second ends which

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softens a cross-sectional stiffness of the rim area for improved removal from the mold (Shapiro Fig. 6 #46a and 45a and Col. 4 Line 29-40).

Regarding Claim 2, Shapiro teaches the wave shape of the intermediate support area is a rectangular wave shape (Shapiro Fig. 6 #46a and 45a).

Regarding Claim 3, Shapiro teaches the wave shape forms divisions in the circumferential direction which are only insignificantly greater than dimensions of the intermediate support area (Shapiro Fig. 6 and 2).

Regarding Claim 4, Shapiro teaches the wave shape is continued across the intermediate support area at least with reduced amplitude from the one of the first and second ends to the other of the first and second ends (Shapiro Fig. 6 #46a).

Regarding Claim 5, Shapiro teaches the intermediate support area within the wave shape has primarily vertically extending surfaces or lines (Shapiro Fig. 2 and 6).

Regarding Claim 6, Shapiro teaches at least one of the first and second ledges forms a centering means for a play-reduced centering relative to a neighboring deep-drawn plastic container when stacked in a stack (Shapiro Fig. 8).

Regarding Claim 7, Shapiro teaches the second ledge (Shapiro #40a) has a contour matching the wave shape of the intermediate support area and overlaps in a plan view radially at least most of a radial width of the first ledge (Shapiro Fig. 6).

Regarding Claim 8, Shapiro teaches the first ledge (Shapiro #43a) of the rim area forms an upper flange rim (Shapiro #36a).

Regarding Claim 10, Shapiro teaches the upper flange rim has an outer downwardly bent edge (Shapiro #36a).

Claims 1, 3-8 and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Des. 256,682 to Lee et al.

Regarding Claims 1 and 11-14, Lee teaches a stackable deep-drawn plastic plant pot container comprising: an at least slightly conical wall and a bottom connected to the conical wall (Lee Fig. 2 and 3), wherein the conical wall has a rim area (Lee Fig. 5) remote from the bottom, wherein the rim area is comprised of a first ledge and a second ledge (Lee Fig. 5), located below the first ledge, wherein the rim area comprises an intermediate support area having a first end connected to the first ledge and having a second end connected to the second ledge (Lee Fig. 5), wherein a stacking spacing of the deep-drawn plastic container, when stacked in a stack, is determined by the first and second ledges, wherein the first and second ledges in a plan view onto the rim area, at least partially overlap, wherein the intermediate support area has a first width at the first ledge that is smaller than a second width at the second ledge; and the intermediate support area (Lee Fig. 1 and 4) having a wave shape at least at one of the first and second ends which softens a cross-sectional stiffness of the rim area for improved removal from a deep drawn mold.

Regarding Claim 3, Lee teaches the wave shape forms divisions in the circumferential direction which are only insignificantly greater than dimensions of the intermediate support area (Lee Fig. 4).

Regarding Claim 4, Lee teaches the wave shape is continued across the intermediate support area at least with reduced amplitude from the one of the first and second ends to the other of the first and second ends (Lee Fig. 1).

Regarding Claim 5, Lee teaches the intermediate support area within the wave shape has primarily vertically extending surfaces or lines (Lee Fig. 1).

Regarding Claim 6, Lee inherently teaches at least one of the first and second ledges forms a centering means for a play-reduced centering relative to a neighboring deep-drawn plastic container when stacked in a stack (Lee Fig. 5).

Regarding Claim 7, Lee teaches the second ledge has a contour matching the wave shape of the intermediate support area and overlaps in a plan view radially at least most of a radial width of the first ledge (Lee Fig. 5).

Regarding Claim 8, Lee teaches the first ledge of the rim area forms an upper flange rim (Lee Fig. 5).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,288,340 to Shapiro et al in view of U.S. Patent No. 859,964 to Pharce-Smith.

Regarding Claim 9, Shapiro is silent on the upper flange rim has a wall thickness that is greater than a wall thickness of remaining parts of the plastic container.

However, Pharce-Smith teaches a plant pot rim with a greater thickness than the

container thickness (Pharce-Smith Fig. 4 #4). It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely an engineering design choice selected to enhance the strength of the rim to prevent undesirable bending when transporting a full/heavy container.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Des. 256,682 to Lee et al

Regarding Claim 2, Lee is silent on the wave shape of the intermediate support area is a rectangular wave shape. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely an artistic/aesthetic design choice to enhance visual appeal.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Des. 256,682 to Lee et al in view of U.S. Patent No. 859,964 to Pharce-Smith.

Regarding Claim 9, Lee is silent on the upper flange rim has a wall thickness that is greater than a wall thickness of remaining parts of the plastic container. However, Pharce-Smith teaches a plant pot rim with a greater thickness than the container thickness (Pharce-Smith Fig. 4 #4). It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely an engineering design choice selected to enhance the strength of the rim to prevent undesirable bending when transporting a full/heavy container.

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent EP 65108 A1 to Berlit in view of U.S. Patent No. 3,045,887 to Caine.

Regarding Claims 1 and 11-14, Berlit teaches a stackable deep-drawn plastic plant pot container comprising: an at least slightly conical wall (Berlit #32) and a bottom (Berlit #14) connected to the conical wall (Berlit #32), wherein the conical wall has a rim area (Berlit #22 and 23) remote from the bottom, wherein the rim area is comprised of a first ledge (Berlit #22) and a second ledge (Berlit #24), located below the first ledge, wherein the rim area comprises an intermediate support area (Berlit #21) having a first end connected to the first ledge (Berlit #22) and having a second end connected to the second ledge (Berlit #24), wherein a stacking spacing of the deep-drawn plastic container, when stacked in a stack, is determined by the first and second ledges, wherein the first and second ledges in a plan view onto the rim area, at least partially overlap (Berlit Fig. 1), wherein the intermediate support area has a first width at the first ledge that is smaller than a second width at the second ledge.

Berlit is silent on the intermediate support area (Berlit #21) having a wave shape at least at one of the first and second ends. However, Cain teaches a plant pot container with an intermediate support area having a wave shape (Cain #262) which softens a cross-sectional stiffness of the rim. It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since for the nesting advantages taught by Cain (Cain Col. 2 line 45-68).

Regarding Claim 2, Berlit as modified teaches the wave shape of the intermediate support area is a rectangular wave shape (Cain Fig. 3).

Regarding Claim 3, Berlit as modified teaches the wave shape forms divisions in the circumferential direction which are only insignificantly greater than dimensions of the intermediate support area (Cain Fig. 3).

Regarding Claim 4, Berlit as modified teaches the wave shape is continued across the intermediate support area at least with reduced amplitude from the one of the first and second ends to the other of the first and second ends (Cain Col. 2 line 51-52).

Regarding Claim 5, Berlit as modified teaches the intermediate support area within the wave shape has primarily vertically extending surfaces or lines (Cain Fig. 3 #262).

Regarding Claim 6, Berlit as modified inherently teaches at least one of the first and second ledges forms a centering means for a play-reduced centering relative to a neighboring deep-drawn plastic container when stacked in a stack (Berlit #24 and 22).

Regarding Claim 7, Berlit as modified teaches the second ledge (Berlit #24) has a contour matching the wave shape of the intermediate support area and overlaps in a plan view radially at least most of a radial width of the first ledge (Berlit #22).

Regarding Claim 8, Berlit as modified teaches the first ledge (Berlit #22) of the rim area forms an upper flange rim (Berlit #23).

Regarding Claim 9, Berlit as modified the upper flange rim has a wall thickness that is greater than a wall thickness of remaining parts of the plastic container (Cain Col. 2 line 69-71).

Regarding Claim 10, Berlit as modified teaches the upper flange rim has an outer downwardly bent edge (Berlit #23).

Response to Arguments

Applicant's arguments with respect to claims 1-14 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent Des. 65,842 and U.s. Patent Des. 241,764.


Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Andrea M. Valenti
Patent Examiner
Art Unit 3643

8 September 2004


Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600